

IN THE INDIANA SUPREME COURT

IN RE: ELECTION RECOUNT	)	
	)	
Senator Spencer R. Deery,	)	
	)	Court of Appeals Case No. 26A-EX-2271
Appellant/Respondent Below,	)	
	)	
v.	)	
	)	
Paula K. Copenhaver,	)	
	)	Appeal from the Indiana Recount Commission
Appellee/Petitioner Below,	)	
	)	
and	)	
	)	
Secretary of State Diego Morales,	)	
Paul Mullin, and Michale Claytor, as	)	
Members of The Indiana Recount	)	
Commission,	)	
	)	
Appellees.	)	

**PAULA K. COPENHAVER’S RESPONSE IN OPPOSITION
TO APPELLANT’S MOTION TO TRANSFER**

Appellee Paula K. Copenhaver (“Candidate Copenhaver” or “Paula Copenhaver”), by counsel, opposes Indiana State Senator Spencer R. Deery’s Motion to Transfer and respectfully requests the Supreme Court deny transfer because Senator Deery’s claims on appeal are moot. The statutory deadline for certifying candidates for the general election has passed, as candidate certification was required to occur, and did occur, “not later than noon seventy-four (74) days before the general election,” that is, by noon on August 21, 2026, pursuant to Ind. Code § 3-8-7-2.

Candidate Copenhaver has already been certified by the Indiana Election Division as the Republican nominee for State Senate District 23 (“SD 23”), and the time for Senator Deery or any other person to be certified as the Republican nominee has expired. There is no relief that can be granted that would place Senator Deery on the general election ballot. Thus, the relief that Senator Deery has requested, *i.e.*, a “stay . . . of the Indiana Recount Commission’s August 10, 2026,

Certificate of Recount,” Appellant’s Verified Emergency Motion to Stay at 10, would be meaningless and futile. The Certificate of Recount was issued more than ten days ago and is not the operative instrument that made Candidate Copenhaver the Republican nominee in SD 23. Rather, it was *the Indiana Election Division’s* (the “Division”) *timely certification* to the counties comprising SD 23, which *was* made as required by statute no later than noon on August 21, that made Candidate Copenhaver the Republican nominee in SD 23. Appellant has not requested a stay of the Division’s certification nor has Appellant sought to make the Division a party to this proceeding. Any such effort would now be untimely. The statutory certification deadline has expired, and with it the period for concluding proceedings related to the primary election has ended. Under clear Indiana law, the primary election is over, and the general election period has begun. This Court should say so by denying transfer and dismissing the appeal.

I. STATEMENT OF FACTS

Candidate Copenhaver filed her petition for recount and election contest on May 18, 2026. On May 19 the Indiana Recount Commission (the “Commission”) issued its impoundment order, impounding all election materials relevant to the recount and contest. Declaration of Sarah Pfister (hereafter, “Pfister Decl.”), ¶ 6, 8 (attaching Verified Petition for Recount and Contest (the “Petition”) and 2026-5, Order of Impoundment). The Petition was promptly served upon Senator Deery, the other candidate for the Republican nomination in SD 23. Pfister Decl. ¶ 7. On May 25, Senator Deery’s counsel entered her appearance before the Commission. *Id.* ¶ 9. Not once during the recount proceedings did Senator Deery ever request that the proceedings be expedited or completed by a particular date. Pfister Decl. ¶ 23.

On July 22, 2026, Evan Norris, the appointed Recount Director for the Commission (the “Recount Director”), informed the parties that the “**deadline to certify the candidates for the**

general election is on August 21, 2026.” Pfister Decl., ¶10 (attaching 7/22/26 email to counsel) (emphasis added). The Recount Director further advised that August 18 and, if necessary, August 20 would serve as the final hearing dates in the recount and contest proceedings, underscoring the Commission’s recognition that all matters had to be resolved before the August 21 certification deadline. *Id.* at 11.

On July 31, 2026, Counsel for Candidate Copenhaver requested a “final combined hearing on the Petitioner’s election recount and contest at the earliest possible time . . . for at least two reasons: (1) an earlier hearing would give both candidates a fuller opportunity for any potential request for judicial review as provided by law, and (2) the public’s interest in the efficient administration of elections, which includes the interests of each of the county election boards, county clerks, and county employees with election related responsibilities throughout the six counties covered by SD 23 in having access to each county’s election materials which remain impounded until this proceeding is concluded.” Pfister Decl. ¶ 12 (attaching 7/30-31/26 email chain with counsel) (quoting 7/31 email).

On a telephone call on July 31, 2026, counsel for the parties, the Recount Director, and counsel for the State Board of Accounts (“SBoA”) discussed the possibility of holding a final hearing as early as August 6 or 7. *Id.* After that call counsel for Candidate Copenhaver stated their availability “on any of August 6, 7, or 10 for a final hearing in Indianapolis and express[ed] . . . preference for the earliest date possible among those three options.” Pfister Decl. ¶ 13 (quoting 7/31 email). In response, counsel for Senator Deery preferred holding the final hearing on August 13, 18, or 20. *Id.* at 14. On August 3, 2026, the Commission issued its order setting the final hearing for Monday, August 10 at 9:00 a.m. Pfister Decl. ¶ 15 (attaching 8/3/26 email and Commission Order).

The final consolidated hearing on the recount and contest was held on August 10, 2026, starting at 9:00 a.m., and concluding at 1:16 p.m. 8/10 Tr. 139:4-5. Before the hearing concluded the Commission unanimously certified Paula Copenhaver as the Republican nominee for SD 23 from the Republican primary election. 8/10 Tr. 134:4-135:8; *see also* Exhibits B and C to the Petition for Transfer. The Commission immediately issued a Certificate of Recount on August 10, certifying Candidate Copenhaver as the “candidate who received the highest number of votes in the precincts” in SD 23’s Republican Primary and ordering the Recount Director to file that certificate “with the Election Division, as required by law.” Pfister Decl. ¶ 16 (attaching original Certificate of Recount). A copy of this Certificate of Recount was provided to Copenhaver and Deery on August 10. *Id.*

On August 17, 2026, the Commission reissued a Certificate of Recount certifying Candidate Copenhaver as the “candidate who received the highest number of votes in the precincts” in SD 23’s Republican Primary and ordering the Recount Director to file that certificate “with the Election Division, as required by law.” Pfister Decl. ¶ 17. The only material difference between the two Certificates of Recount is that the certificate issued on August 10 contained a typographical error identifying Candidate Copenhaver as the Republican candidate for the “November 5, 2024 general election” rather than the November 3, 2026, general election. Pfister Decl. ¶ 18.

Indiana’s Election Code provides that, “[t]he election division shall, not later than noon seventy-four (74) days before the date of the general election, certify the primary election results canvassed and tabulated under IC 3-10-1-34 for . . . candidates for legislative and local offices who are required to file a declaration of candidacy with the election division under IC 3-8-2 . . . to the county election board of each county in which the candidates are to be voted for at the next general

election. No other form of certification of nomination for the offices is necessary.” I.C. § 3-8-7-2. Pfister Decl. ¶ 19. The Division certified Paula Copenhaver as the Republican candidate for SD 23 to the county election board of each county in the district within days of issuance of the original Certificate of Recount. Pfister Decl. ¶ 20.

The Division’s website contains a link to the 2026 General Election Candidate List setting forth the candidates certified by the Division to the counties. A true and accurate copy of the list of candidates for the 2026 General Election scheduled to take place on 11/3/2026 and certified by the Division as of 8/12/2026 is attached to the Pfister Decl. as Exhibit J and includes Paula K. Copenhaver as the Republican nominee in SD 23. As of August 21, 2026, at 12:01 p.m. the list of general election candidates in SD 23 on the Division’s website identifies Copenhaver as the Republican Party candidate, David A. Sanders as the Democrat Party candidate, and Joshua Brant as the Independent Party candidate. Pfister Decl. ¶ 21.

II. STATEMENT OF LAW

A. Transfer Should Be Denied Because the Appeal is Moot

As a threshold matter, the Supreme Court should consider whether the matter raised by Senator Deery is moot. *Thomas v. Foyst*, 260 N.E.3d 887, 893 (Ind. 2025). When a case has become moot during its pendency, a court typically dismisses the case. *Mosley v. State*, 908 N.E.2d 599, 603 (Ind. 2009). This is because, without a concrete controversy, any judicial opinion is, “for all practical purposes,” an advisory opinion. *I.J. v. State*, 178 N.E.3d 798, 799 (Ind. 2022) (per curiam) (quoting *Mosley*, 908 N.E.2d at 603). Indiana courts generally “do not provide advisory opinions,” *Hill v. State*, 592 N.E.2d 1229, 1230 (Ind. 1992), but instead focus on resolving live cases and controversies. *See Mosley*, 908 N.E.2d at 603. “The long-standing rule in Indiana courts has been that a case is deemed moot when no effective relief can be rendered to the parties before the court.”

Matter of Lawrance, 579 N.E.2d 32, 37 (Ind. 1991).

1. Expiration of the General Assembly’s candidate certification deadline moots any challenge to a certification that existed before the deadline

This case became moot less than four days after it was filed on August 17, 2026. At noon on August 21, 2026, the statutory deadline for certifying candidates for the general election expired, foreclosing any practical or effective relief that could be granted with respect to the Republican nomination for SD 23. I.C. § 3-8-7-2. The statutory deadline for certifying candidates for the general election was well known to all parties and expressly brought to their attention during the recount. Although Senator Deery omits any discussion of it in his moving papers, that clear deadline requires dismissal of this case.

As this Court recently found, “*courts constrain their role* in protecting our Indiana Constitution’s guarantee that ‘[a]ll elections shall be free and equal,’ Ind. Const. art. 2, § 1, *by not only honoring the General Assembly’s carefully calibrated candidacy requirements*, [but also by honoring] its *carefully calibrated scheme for candidate and election challenges*.” *Thomas*, 260 N.E.3d at 892 (emphasis added). This “*includes enforcing the legislature’s chosen deadlines*, the forums it has selected for adjudicating those challenges, the procedural requirements it imposes, and the remedies it has selected.” *Id.* (emphasis added).

This Court regularly defers to election procedures established by the General Assembly and, as the Court said just last year, it will enforce them because doing so upholds the constitutional principle of free and equal elections. *Id.*; *see also Pabey v. Pastrick*, 816 N.E.2d 1138, 1143 (Ind. 2004) (“failure to comply with the requirements of the election contest statutes generally requires dismissal”); *Higgins v. Hale*, 476 N.E.2d 95, 100 (Ind. 1985) (“Since it appears the Legislature’s intention was to change the September 1 deadline with regard to certain types of vacancies on the general election ballot, that intention should be respected and implemented by this Court as it was

by the trial court.”); *State ex rel. Young v. Noble Cir. Court*, 263 Ind. 353, 332 N.E.2d 99, 102 (1975) (“It is a familiar principle that one who seeks the benefit of a statutory proceeding must comply with all procedural terms of the statute.”). As indicated in *Thomas*, the reasons this Court respects legislatively established election deadlines are both constitutional separation of powers (the Legislature, not the courts, is charged with setting election procedures and deadlines¹) and ensuring free and equal elections. Respect for the Legislature’s carefully chosen deadlines ensures that elections are conducted in a uniform and equal manner, avoiding chaos that could arise from *ad hoc* or judicially established election deadlines.

Just as this Court has regularly enforced Indiana’s election statutes and deadlines, so have courts in other states dismissed as moot cases that could not be decided before an election certification deadline. For example, in *Sasser v. South Carolina Democratic Party*, 282 S.E.2d 602, 603 (S.C. 1981), the South Carolina Supreme Court reasoned that “contests of a primary election must be settled in time for the electorate to exercise their voting franchise at the general election set by law.” The court surveyed other jurisdictions and noted that “[a]s a general rule, courts have held that they are without power to grant substantial relief once the time passes for the name of a contestant to be certified for the election of officers to be placed on the official ballot.” *Id.* In *Willis v. Wukela*, 665 S.E.2d 171, 172-74 (S.C. 2008), the court followed this logic, dismissing as moot an appeal that could not be resolved before the pre-primary certification deadline. Similarly, in *Vernon Cnty. Republican Comm. by & Through Haggard v. Lee*, 692 S.W.3d 439, 442–43 (Mo. Ct. App. 2024), transfer denied (July 8, 2024), the court found a case moot after the statutory deadline for modifying the ballot had passed. In *Hill v. Superior Court of Los Angeles*

¹ Compare *Morales v. Rust*, 228 N.E.3d 1025, 1047 (Ind.), *reh'g denied* (Apr. 22, 2024), *cert. denied*, 145 S. Ct. 177, 220 L. Ed. 2d 32 (2024) (the Constitution grants the General Assembly broad authority to shape election policy).

County, 109 Cal. App. 91, 94 (Cal. Ct. App. 1930), an election contest was moot where the Secretary of State’s post-primary compilation of candidates for the general election would be certified before the contest proceeding could be completed. In *Burbank v. Evnen*, 32 N.W.3d 612, 620–22 (Neb. 2026), the Nebraska Supreme Court found a case *not* moot and retained jurisdiction because, although the Secretary of State had certified the candidates for the upcoming election, unlike in the instant case, *the statutory deadline for completing the certification had not yet passed*, thereby clearly signaling that had the certification deadline passed the court would have found the case moot.

In *Wood v. Raffensperger*, 981 F.3d 1307, 1317 (11th Cir. 2020), the court held that post-election “it is not possible for us to delay certification nor meaningful to order a new recount when the results are already final and certified.” In *Donald J Trump for President Inc. v. Sec’y of State*, Nos. 355378, 355397, 2020 Mich. App. LEXIS 8099, at *2-3 (Mich. Ct. App. Dec. 3, 2020), the plaintiff sought a recount after the election results were certified and the court observed:

Plaintiff does not address whether the certification of the election result by the Board of State Canvassers had any impact on the viability of its suit below or on the viability of the instant application. Perhaps the reason for plaintiff failing to discuss the impact of the certification is because such action by the Michigan State Board of Canvassers *clearly rendered plaintiff’s claims for relief moot*.

(emphasis added).

The caselaw is clear. Certification, whether of candidates pre-election or of election results post-election, moots a claim for judicial relief, including the continuation of a recount or election contest. This is a vital principle of election law that respects the role of the Legislature in setting deadlines, protects the rights of voters and candidates, helps ensure orderly preparation for the general election, and incentivizes candidates to expeditiously pursue any post-primary claims for relief.

Here, Indiana's pre-general-election candidate certification deadline has passed. As a result, were this Court to permit the matter to proceed, Senator Deery could obtain no effective relief because the statutory deadline for certifying candidates for the general election has passed, and he can no longer be certified as the Republican nominee in SD 23. Accordingly, no judicial decision could have a practical effect on the parties' rights, and enforcement of the General Assembly's deadline requires dismissing this appeal as moot.

2. The Court should not rewrite the rules for the 2026 general election by disregarding the candidate certification deadline

There are several important reasons for Indiana's candidate certification deadline. Chief among them is ensuring that the public, political parties, and the candidates themselves have a minimum period during which the list of general election candidates is definitively established. The post-certification general election period allows candidates to campaign effectively, enables parties to organize and support their nominees, and provides voters with adequate time to evaluate their choices. Shortening the time between final certification and the general election would undermine these interests, prejudicing the public, the parties, and the candidates.

In this case, were the certification deadline disregarded, Republican voters would have less time to coalesce around their candidate and promote that nominee in comparison to the Democratic and Independent Party nominees. As for the Democrat and Independent candidates, they likewise could be disadvantaged by having less time to focus their advertising on the Republican nominee. The public, in turn, would have a shortened period within which to evaluate the candidates and make an informed choice. These are reasonable considerations and are by no means the only interests that may have led the General Assembly to adopt the certification deadline. There is no legitimate basis for disregarding the Legislature's decision on this point and substituting the judgment of a court, candidate, or other person as to the amount of time that should exist between

candidate certification and the general election.

Senator Deery may argue in reply that this Court can alter the certification deadline based on his speculation that doing so would not harm or impair the counties' ability to prepare for the election. But he has not even attempted to offer any evidence that a change to the statutory deadline could be managed by any county in SD 23, much less by all six counties within the district. Instead, his motion seeking transfer, merely recites certain statutory deadlines applicable to county election officials. He provides no evidence regarding the time required to complete the tasks associated with those deadlines, the interdependence of those tasks, or the practical effect a delayed certification would have on election administration. He does not provide any evidence from a county clerk or other person charged with administering elections, supporting his contention that voters and the counties will not be harmed. Absent such evidence, there exists no basis for an inference that the General Assembly's certification deadline may be disregarded without adverse consequences for the orderly conduct of the election.

Nor has Senator Deery accounted for the reality that what may be accomplished in a shorter time in some counties may take longer in others. He provides no evidence, only speculation, that the candidate certification deadline can be ignored without harming campaigning and election preparations or creating voter confusion.

Even had Senator Deery presented such evidence, it would not justify departing from the General Assembly's deadline. The Legislature is responsible for prescribing the rules and deadlines governing elections, while the Judiciary is responsible for respecting and enforcing those enactments. This settled division of authority between the legislative and judicial branches cannot be set aside simply because a candidate disagrees with the Commission's decision. This is particularly true where, as here, the candidate made no effort to expedite the Commission's final

decision and then failed to pursue appellate relief with reasonable dispatch or transparency, including by failing to advise the Court of the impending candidate-certification deadline.

3. Expiration of Senator Deery’s opportunity to seek judicial review is the result of his own strategic decisions

While Senator Deery may argue that dismissal of his appeal is a harsh consequence, the result is one of his own making. The statutory certification deadline was well known and specifically identified to both parties more than a month before its expiration. A state legislator can hardly claim surprise regarding a deadline established in the Election Code. Once that deadline passed, the possibility of effective relief expired with it, rendering this appeal moot.

Furthermore, Senator Deery has not proceeded with sufficient alacrity in the recount and in appealing the Commission’s decision. The Seventh Circuit has explained, “[t]he obligation to seek injunctive relief in a timely manner in the election context is hardly a new concept...” such “claims must be brought expeditiously . . . to afford the district court sufficient time in advance of an election to rule without disruption of the electoral cycle.” *Jones v. Markiewicz-Qualkinbush*, 842 F.3d 1053, 1060-61 (7th Cir. 2016) (internal marks omitted). “Laches arises when an unwarranted delay in bringing a suit or otherwise pressing a claim produces prejudice.” *Fulani v. Hogsett*, 917 F.2d 1028, 1031 (7th Cir. 1990).

With the statutory certification deadline in mind, either party could have requested the final recount hearing be advanced to allow additional time for an appeal. Senator Deery, however, requested the final hearing be held *after* the date on which it ultimately occurred.

Then Senator Deery waited an entire week after the Commission’s final order before filing his appellate motions. Even then, he did not file an Appellant’s Brief setting forth the legal basis for his claims. As a result, it was inevitable that any decision in his appeal would occur only after the certification deadline had expired.

4. Continuation of this appeal is prejudicial

Prejudice to the electoral process, to the public, and to Candidate Copenhaver arise from Senator Deery's failure to expeditiously pursue appellate review. First, the statutory candidate-certification deadline has passed but litigation regarding the primary election is continuing. Second, Senator Deery's proposed schedule for his appeal encroaches on additional election deadlines. Even if the Court granted transfer the day after Deery's reply supporting transfer is due, his proposed schedule provides five more days (giving him at least 19 days total after the Commission's decision) to draft his opening brief, just five days for Copenhaver's response brief, and three more days for Deery's reply. Via Deery's schedule (which is unfair to Copenhaver), briefing would not be completed until September 7, three days *after* the statutory deadline by which county election boards *must* begin printing absentee ballots. *See* Ind. Code §§ 3-11-4-10, -14. This does not even consider a reciprocal period for Copenhaver's brief and time for oral argument and the Court to deliberate, likely ensuring conflict with the September 14 deadline for ballots to be delivered, I.C. § 3-11-4-15, and the September 19 deadline to transmit absentee ballots to military and overseas voters. 52 U.S.C. § 20302 (a)(8)(A).

That is not all. The U.S. Supreme Court has explained that “[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.” *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006). Such confusion should be avoided at all costs, particularly where a candidate's own strategic choices to not expedite the process contributed to what he now calls an “emergency.”

Confusion for the electorate and election officials is inherent in Senator Deery's failure to articulate a cogent theory for how he could obtain effective relief on appeal. Having failed on

August 10 or any time thereafter to request the Commission’s decision be held in abeyance, he belatedly asks the Court to “stay” the Commission’s Certificate of Recount. But, as discussed above, this is not the operative candidate certification for the general election, and he requests an obvious impossibility – that the Commission be prevented from doing something it has already done. The Court “cannot turn back the clock and create a world in which” the Commission did not certify Paula Copenhaver as the Republican Nominee for SD 23. *Wood*, 981 F.3d at 1317.

Furthermore, Senator Deery has never sought to challenge, stay or set aside the Election Division’s certification of Paula Copenhaver as the SD 23 Republican nominee . As the Arkansas Supreme Court explained in analogous circumstances, having “failed to [timely] seek a stay of certification . . . a judgment by this court will have no practical legal effect; therefore, the issue is moot.” *Kimbrell v. Thurston*, 611 S.W.3d 186, 194 (Ark. 2020). Despite Senator Deery’s claims about ballot decisions that did not go his way, he cannot now obtain any practical legal relief, and is not entitled to an advisory opinion from this Court.

Lacking a pathway to relief that could put him on the general election ballot, Senator Deery nevertheless requests the Court throw a wrench in election preparations within six counties, not parties to this case. Without citing a single statute, court rule, or case in support Deery requests this Court (or the Court of Appeals) issue “a preliminary injunction.” This extraordinary and unprecedented request is likely already sowing the confusion for election officials and the public that the Supreme Court warned against in *Purcell*.

Setting aside the serious question whether an appellate court can issue “preliminary injunctions,” given they are creatures of the Trial Rules and require factual findings made by a trial court, the request highlights the fundamental problem with this appeal: it comes too late. Senator Deery seeking an order preventing county election officials from continuing their preparations for

the general election itself demonstrates the election process has already advanced to a stage at which judicial intervention would disrupt the orderly administration of the general election.

III. CONCLUSION

As Justice Gorsuch explained, “[e]lections must end sometime[.]” *DNC v. Wis. State Legis.*, 141 S. Ct. 28, 28 (2020) (Gorsuch, J., concurring in denial of application to vacate stay). The Indiana General Assembly determined that proceedings related to a primary election must end by noon on the seventy-fourth day before the general election. Because the Legislature’s clear deadline has expired, it is too late for further proceedings related to the primary election. This appeal is moot.

Transfer should be denied.

Date: August 21, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH APPELLATE RULE 44(E)

I verify that this Response in Opposition to Appellant's Motion to Transfer complies with the type-volume limitation of Appellate Rule 44(E). This Response in Opposition to Appellant's Motion to Transfer does not exceed 4,200 words. This Response in Opposition to Appellant's Motion to Transfer contains 4,200 words.

/s/ William Bock III

William Bock III

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2026, before 4:30 p.m., I electronically filed the foregoing *PAULA K. COPENHAVER'S RESPONSE IN OPPOSITION TO APPELLANT'S MOTION TO TRANSFER* using the Indiana E-Filing System.

I also certify that on August 21, 2026, before 4:30 p.m., the foregoing document was served upon the following persons via IEFS:

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